

(2013) 06 KAR CK 0084

In the Karnataka High Court

Case No : Regular Second Appeal No. 412 of 2012 (Res)

Sri Kotemariamamma Devalaya, Sri G.C. Jagadish, Sri A.S.
Prakash and Sri P.G. Sukumar

APPELLANT

Vs

Sri K.B. Harish

RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Citation : (2013) 4 KarLJ 379

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : B.S. Basavaraju, for the Appellant; S.G. Bhagawan, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The defendants in O.S. No. 161/2008 on the file of the Principal Civil Judge (Jr. Dn.), Madikeri are before this Court challenging the judgment and decree in R.A. No. 13/2009 dated 16.3.2011 on the file of the Civil Judge (Sr. Dn.), Madikeri. The respondent is the plaintiff in the suit. The suit filed by the plaintiff for cancellation of the gift deed dated 28.12.2007 was dismissed by the trial Court. The first Appellate Court has reversed the said judgment and decree and has decreed the suit.

2. There is a delay of 258 days in filing the appeal. Therefore, the appellants have filed an application-I.A. No. 1/2012 seeking condonation of delay in filing the appeal. The second appellant has filed an affidavit in support of the application deposing that they had not received any summons from the Court and that the appellants were not aware of the case filed by the plaintiff. On 17.4.2011, he came to know through his friend that the respondent has obtained a decree from the Court against Kotemariamamma Devalaya. Immediately, he contacted his Advocate and on verification, he came to know about the judgment passed by the first Appellate Court. Next day, he applied for the certified copies of the judgment and decree. Thereafter, he decided to file the appeal.

3. The respondent has filed objections to the application contending that appellant No. 2, who is respondent No. 2 before the first Appellate Court has been served with the notice apart from the other respondents. On 13.4.2009, a learned Advocate has undertaken to file vakalath on their behalf. However, the appeal was adjourned to 27.5.2009. They were placed ex-parte on that day. After several adjournments, the first Appellate Court heard the arguments and delivered the judgment on 16.3.2011. They have not disclosed the name of the friend, who had informed them about passing of the judgment. They have not come to this Court with clean hands.

4. The appellants have filed a rejoinder to the counter affidavit. Appellant No. 4 has sworn to the affidavit deposing that appellants have not received any summons and they were not aware of the proceedings in R.A. No. 13/2009. They have not engaged any Advocate to represent them in the Court. At no point of time, they had engaged the service of Sri M.S. Biddappa, learned Advocate.

5. Yet another additional affidavit was filed by the appellants sworn to by appellant No. 4. In his affidavit, he has stated that he is the President of the first appellant-Mandali. He has not signed the order sheet before the first Appellate Court. However, appellant Nos. 1, 2, 3 and 5 had inadvertently without verification of the records had told him that they had not appeared before the Chief Ministerial Officer. They had explained to him that they are not in a position to understand and explain as to how and why they appeared before the CMO.

6. The respondent has filed a reply to the above affidavit stating that the appellants are castigating the functioning before the first Appellate Court. They are well educated and worldly wise persons.

7. I have heard the learned Counsel for the parties.

8. Learned Counsel for the appellants as also the respondent have reiterated the contentions urged in the applications/affidavits and the objections in their arguments.

9. The suit filed by the respondent/plaintiff is for cancellation of a gift deed made in favour of the first appellant-Mandali. In the trial Court, the appellants were placed ex-parte. The trial Court had dismissed the suit. The respondent/plaintiff filed the appeal before the first Appellate Court. The respondent has filed the order sheet of the first Appellate Court. It is clear from the order sheet dated 13.4.2009 that appellant Nos. 1, 2, 3 and 5 have appeared before the first Appellate Court on 13.4.2009. They have signed the order sheet. The appeal was posted on subsequent dates and finally it was allowed.

10. It is the specific case of the appellants that they were not aware of the appeal filed by the plaintiff/respondent before the first Appellate Court. The first affidavit states that they came to know through a friend that the respondent has obtained an order against them. Immediately thereafter, he has contacted his Advocate. In the rejoinder filed on 28.3.2013, they have again reiterated that

they have not engaged a lawyer by name M.S. Biddappa. They have not signed any order sheet before the Chief Ministerial Officer of the first Appellate Court in the appeal. In the additional affidavit, the 4th appellant admits that appellant Nos. 1, 2, 3 and 5 have inadvertently without verification had appeared before the Court. They are not in a position to understand and explain as to how and why they appeared before the CMO. It is not the case of the appellants that they are illiterate persons. Though summons was served on them, they have remained ex-parte before the trial Court. In the first appeal, though they have appeared before the Court and signed the order sheet, they have pleaded ignorance of the proceedings. It is thus clear that the appellants have not come to the Court, with clean hands. They have suppressed material facts. The judgment and decree impugned herein was passed: by the first Appellate Court on 16.3.2011. They have applied for certified copy of the judgment and decree on 18.11.2011 and copy was delivered on 26.11.2011. The appeal was filed on 20.9.2012. They have not even explained the reasons for the delay in filing the appeal from the date of obtaining the certified copy. In the circumstances, I am of the view that the delay in filing the appeal cannot be condoned. I.A. No. 1/2012 is accordingly dismissed. Consequently the appeal is also dismissed. No costs.